

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
CLARKSBURG

SILVESTRE REYES-FELICIANO,

Plaintiff,

v.

Civ. Action No. 1:18-CV-76
(Kleeh)

UNITED STATES OF AMERICA,

Defendant.

MEMORANDUM OPINION AND ORDER ADOPTING REPORT AND RECOMMENDATION
[ECF NO. 52], GRANTING DEFENDANT'S MOTION [ECF NO. 37],
AND DENYING AND DISMISSING COMPLAINT WITH PREJUDICE

Pending before the Court is a Report and Recommendation ("R&R") by United States Magistrate Judge Michael J. Aloï. The R&R recommends that the Court grant the pending *Motion to Dismiss, or in the Alternative, for Summary Judgment* and deny and dismiss the Complaint with prejudice. For the reasons discussed herein, the Court adopts the R&R.

I. BACKGROUND

On April 20, 2018, the pro se Plaintiff, Silvestre Reyes-Filiciano ("Plaintiff"), filed a Complaint against the Defendant, the United States of America ("Defendant"), pursuant to the Federal Tort Claims Act ("FTCA").¹ Plaintiff's Complaint

¹ As the R&R notes, Plaintiff's Complaint, liberally construed, also asserts a claim of cruel and unusual punishment in

**MEMORANDUM OPINION AND ORDER ADOPTING REPORT AND RECOMMENDATION
[ECF NO. 52], GRANTING DEFENDANT'S MOTION [ECF NO. 37],
AND DENYING AND DISMISSING COMPLAINT WITH PREJUDICE**

stems from a physical altercation at FCI Hazelton between Plaintiff and correctional officers.² Pursuant to 28 U.S.C. § 636 and the local rules, the Court referred the action to the Magistrate Judge for initial review. Defendant filed a *Motion to Dismiss, or in the Alternative, for Summary Judgment*. ECF No. 37. The Motion was fully briefed. On December 19, 2019, the Magistrate Judge entered the R&R.

II. DISCUSSION

The R&R recommended that the Court grant Defendant's Motion. It informed the parties that they had fourteen (14) days from the date of the service of the R&R to file "specific written objections, identifying the portions of the Report and Recommendation to which objection is made, and the basis of such objection." It further warned them that the "[f]ailure to file written objections . . . shall constitute a waiver of de novo review by the District Court and a waiver of appellate review by the Circuit Court of Appeals." Plaintiff accepted service of the R&R on December 27, 2019. To date, no objections have been

violation of the Eighth Amendment to the United States Constitution.

² The events forming the basis for Plaintiff's Complaint took place while he was incarcerated at FCI Hazelton, but he is no longer incarcerated there.

**MEMORANDUM OPINION AND ORDER ADOPTING REPORT AND RECOMMENDATION
[ECF NO. 52], GRANTING DEFENDANT'S MOTION [ECF NO. 37],
AND DENYING AND DISMISSING COMPLAINT WITH PREJUDICE**

filed. Plaintiff filed only a "Response to the Defendant's Reply Memorandum Filed on December 9th, 2019." ECF No. 54.³

When reviewing a magistrate judge's R&R, the Court must review de novo only the portions to which an objection has been timely made. 28 U.S.C. § 636(b)(1)(C). Otherwise, "the Court may adopt, without explanation, any of the magistrate judge's recommendations" to which there are no objections. Dellarcirprete v. Gutierrez, 479 F. Supp. 2d 600, 603-04 (N.D.W. Va. 2007) (citing Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983)). Courts will uphold portions of a recommendation to which no objection has been made unless they are clearly erroneous. See Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

III. CONCLUSION

Because no party has objected, the Court is under no obligation to conduct a de novo review. Accordingly, the Court reviewed the R&R for clear error. Upon careful review, and finding no clear error, the Court **ADOPTS** the R&R [ECF No. 52]. Defendant's Motion [ECF No. 37] is **GRANTED**. This action is **DISMISSED WITH PREJUDICE** and **STRICKEN** from the Court's active docket.

³ The Court will disregard this filing. See LR PL P 11(d) ("Surreply and surrebuttal memoranda may not be filed.").

MEMORANDUM OPINION AND ORDER ADOPTING REPORT AND RECOMMENDATION
[ECF NO. 52], GRANTING DEFENDANT'S MOTION [ECF NO. 37],
AND DENYING AND DISMISSING COMPLAINT WITH PREJUDICE

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to counsel of record and to the pro se Plaintiff, via certified mail, return receipt requested, at the last known address as shown on the docket.

DATED: March 12, 2020

/s/ Thomas S. Kleeh

THOMAS S. KLEEH

UNITED STATES DISTRICT JUDGE